



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 5, 2019

Via electronic mail

Mr. Freddy Martinez
Policy Analyst, Open the Government
MuckRock News
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RE: FOIA Request for Review – 2019 PAC 59460

Dear Mr. Martinez:

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2018)). For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted in this matter.

You state that on July 20, 2019,¹ you submitted a multi-part FOIA request to the Chicago Police Department (CPD) seeking a wide variety of records, from January 1, 2017, to date, "related to the solicitation, acquisition, and use of face recognition technology and related software and services."² You informed CPD that the records you sought included, but were not limited to:

- Agreements: contracts (including non-disclosure agreements), licensing agreements, nondisclosure agreements
- Bid records: Requests For Proposal (or equivalent calls for bids), sole source or limited source justification and approval documentation, documentation of selection, and

¹The materials you provided to this office indicate a request date of July 8, 2019, and this office has been unable to obtain clarification concerning the timing of the submission of your request despite exchanging multiple e-mails with you.

²FOIA request from Freddy Martinez to Whom It May Concern (July 8, 2019).

other materials generated in the consideration and selection of the technology in question

- Company relations and communications: records related to meetings or follow-up actions with any vendors, companies, or other private entities marketing face recognition to this agency for immigration, intelligence, law enforcement, or other use.
- Financial records: purchase orders, invoices, and other memoranda and documentation.
- Marketing records: All marketing materials - unsolicited, requested, or otherwise - acquired from vendors of face recognition technology
- Policy records: any policy directives, guidance documents, memoranda, training materials, or similar records governing the use of face recognition technology for immigration, law enforcement, or other purposes. Any memoranda of understanding between this agency and other agencies to share data, access remote systems or other forms of information sharing with external agencies.
- Training records: training material governing the use, sharing, or access to any related data related to or collected by the face recognition software/technology, including the legal standard that is required before using the technology. Documents, should they exist, about training for bias in the use of facial recognition technology.
- Use and function records: Materials that describe the function of the software considered or in use by this agency, including emails, handouts, PowerPoint presentations, advertisements, or specification documents.
- Validation and accuracy: Records, reports, audits, and other documents sufficient to describe validation, accuracy, reliability, and policy compliance of the system.^[3]

On July 29, 2019, CPD responded that your request was unduly burdensome as written under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2018)) and invited you to narrow it. CPD stated that your request did not include search terms or names or e-mail addresses of accounts to search. On September 6, 2019, you submitted the above-captioned Request for Review contesting CPD's response. You argued that CPD "has turned over a huge number of records" regarding its use of facial recognition technology to the Center on Privacy &

³FOIA request from Freddy Martinez to Whom It May Concern (July 8, 2019).

Technology at Georgetown Law, and has "turned over records to another non-profit in Chicago who has ongoing litigation with their department at this time."⁴ You did not identify this non-profit, but claimed that "the FOIA office should know where to search for the records * * *. They would only have to ask the other FOIA officers who have responded to previous FOIAs where they searched or ask the Bureau of Detectives, who maintains an entire Facial Recognition unit, where the records might be reasonably placed."⁵

Section 3(g) of FOIA provides, in pertinent part:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

Your request was clearly categorical in that it sought copies of all records pertaining to facial recognition technology and related software and services for a period of over 30 months. You did not allege that CPD's response was untimely. CPD properly offered you the opportunity to narrow your request to manageable proportions. Although a requester is not required to identify specific employees or e-mail accounts in order to properly request communications about a particular subject,⁶ you requested a much broader scope of records concerning not just facial recognition technology but unspecified software and services. Your claim that CPD has already gathered a huge number of records regarding facial recognition

⁴E-mail from Freddy Martinez, Policy Analyst, Open the Government, to PAC counsel (August 21, 2019).

⁵E-mail from Freddy Martinez, Policy Analyst, Open the Government, to PAC counsel (August 21, 2019).

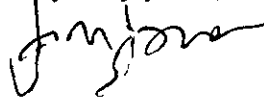
⁶See Ill. Att'y Gen. PAC Req. Rev. Ltr. 51735, issued October 1, 2018, at 6 ("When a request for e-mails does not identify specific e-mail accounts, FOIA does not require the public body to search every account; instead, the public body may conduct an adequate search by identifying the employees whose e-mail accounts are reasonably likely to contain responsive records, and taking measures reasonably calculated to locate such records.").

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technology for the Center on Privacy & Technology at Georgetown Law, and unspecified records for an unnamed non-profit, if true, does not demonstrate that CPD would not have to perform an extensive search for records responsive to your particular request. This office has not received information indicating that your extensive request aligns with the same records gathered in those instances. Further, in neither your FOIA request nor your Request for Review did you articulate the public interest in disclosure of the records you requested. Although there generally is a significant public interest in the disclosure of certain information concerning CPD's use of facial recognition technology, the materials you submitted do not suggest that the public interest in the disclosure of every record you requested outweighs the apparent heavy burden of compliance with the request. Because the available information indicates that CPD properly treated your request as unduly burdensome pursuant to section 3(g) of FOIA, the Public Access Bureau has determined that no further action is warranted in this matter. You may wish to submit a new FOIA request to CPD for a more limited subset of records.

This letter closes this file. If you have any questions, please contact me at (312) 814-8413 or jjones@atg.state.il.us.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
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